

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Strauss	Team: Squad #6	CCRB Case #: 201903685	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/30/2019 2:25 AM	Location of Incident: § 87(2)(b)	Precinct: 25	18 Mo. SOL 10/30/2020	EO SOL 6/16/2021	
Date/Time CV Reported Wed, 05/01/2019 8:06 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/01/2019 8:06 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Justin Senese	21424	959978	025 PCT
2. POM Keith Wagenhauser	18817	960062	025 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Keith Wagenhauser	Abuse: Police Officer Keith Wagenhauser seized § 87(2)(b)'s property.	§ 87(2)(b)
B.POM Justin Senese	Abuse: Police Officer Justin Senese seized § 87(2)(b)'s property.	§ 87(2)(b)
C.POM Keith Wagenhauser	Abuse: Police Officer Keith Wagenhauser threatened to arrest § 87(2)(b)	§ 87(2)(b)

Case Summary

On May 1, 2019, § 87(2)(b) filed this complaint over the phone with the CCRB.

On April 30, 2019, at approximately 2:25 a.m., an ambulance arrived at § 87(2)(b) residence, located at 11 East 125th Street in Manhattan, accompanied by Police Officer Justin Senese and Police Officer Keith Wagenhauser, of the 25th Precinct, to transport him for medical treatment. The EMTs, followed by PO Senese and PO Wagenhauser, transported § 87(2)(b) to § 87(2)(b). When they arrived at the Emergency Room entrance, a § 87(2)(b) security guard asked § 87(2)(b) if he had any weapons or metals and he handed her two 1.2-ounce canisters of pepper spray. PO Senese and PO Wagenhauser took the pepper spray from the security guard and PO Wagenhauser told § 87(2)(b) that he could be arrested for possessing the pepper spray (**Allegations A-C: Abuse of Authority**, § 87(2)(g)). The two pepper spray bottles were not returned to § 87(2)(b) and were thrown out by PO Wagenhauser. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) No arrests or summonses resulted from this incident.

There was no video footage obtained of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Keith Wagenhauser seized § 87(2)(b) s property.

Allegation (B) Abuse of Authority: Police Officer Justin Senese seized § 87(2)(b) s property.

Allegation (C) Abuse of Authority: Police Officer Keith Wagenhauser threatened to arrest

§ 87(2)(b)

§ 87(2)(g)

It is undisputed that after a 911 call for medical assistance for § 87(2)(b) PO Senese and PO Wagenhauser arrived with the EMTs. § 87(2)(b) was transported to § 87(2)(b) and PO Senese and PO Wagenhauser followed in their patrol vehicle. Prior to entering § 87(2)(b) a hospital security guard asked § 87(2)(b) if he had anything on him, and he handed her two small canisters of pepper spray. Shortly thereafter, the security guard gave PO Wagenhauser the pepper spray bottles and he and PO Senese confronted § 87(2)(b). They did not return the pepper spray to § 87(2)(b) and it was not vouchered.

§ 87(2)(b) testified (Board Review 01) that he had two 1.2-ounce bottles of pepper spray. He found one bottle on the street and was unable to provide the brand or any additional information about the other bottle. After § 87(2)(b) was examined in the emergency room, the officers approached him. An officer, who had the pepper spray in his hand, told § 87(2)(b) in a facetious manner, that he did not see the pepper spray and that if § 87(2)(b) acknowledged that he saw the pepper spray, he could be arrested.

PO Wagenhauser testified (Board Review 02) that the § 87(2)(b) security guard gave him the two pepper spray bottles in a security booth, while PO Senese was with § 87(2)(b) in the triage area. The pepper spray bottles were small, had black canisters with red tops, and were about three inches long. PO Wagenhauser knew that it was pepper spray because of the bottles’

appearance and due to his familiarity with pepper spray. PO Wagenhauser told § 87(2)(b) that he could be arrested for the pepper spray, as it was a dangerous weapon. PO Wagenhauser was not sure whether PO Senese said anything about § 87(2)(b) being arrested. § 87(2)(b) could have been arrested for carrying the pepper spray, as it is illegal to possess in New York City. PO Wagenhauser threw out the pepper spray in a garbage can, and he and PO Senese left the location.

§ 87(2)(g) PO Senese specified that he was familiar with § 87(2)(b) solely based upon two or three similar interactions in the past year, in which § 87(2)(b) called 911 for medical assistance. PO Senese knew that the two bottles were pepper spray because he carries it every day. PO Senese did not recall whether he or PO Wagenhauser seized the pepper spray and he did not know whose decision it was to do so. PO Senese probably told § 87(2)(b) that he could be arrested for carrying the pepper spray. PO Senese did not recall whether PO Wagenhauser told § 87(2)(b) that he could be arrested.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A warrant audit search provided by the Internal Affairs Bureau indicated that neither PO Wagenhauser nor PO Senese searched for § 87(2)(b) name in their system on April 30, 2019 (Board Review 04).

It is not unlawful for an individual to possess a pocket-sized self-defense spray device, if he or she is at least eighteen years of age and has not previously been convicted of a felony or any assault in New York. The pepper spray must have a warning label regarding it being used solely for self-defense and an insert with directions for use, first aid information, and safety information. The device shall not be sold by anyone other than a licensed dealer. New York Penal Law § 265.20 (14)(b) (Board Review 05).

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 06).
- PO Wagenhauser has been a member of service for three years and has been a subject in one CCRB complaint and five allegations, which is pending investigation. § 87(2)(g)
- PO Senese has been a member of service for three years and has been a subject in three CCRB complaints and five allegations, one of which was substantiated and one of which is pending investigation.
 - 201800068 involved a substantiated allegation of an entry. The Board recommended Command Discipline A and the NYPD concurred.

§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A Notice of Claim Inquiry was submitted to the NYC Comptroller's Office on September 30, 2019 and will be included in the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date